

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEYON MARQUIST JACKSON,

Defendant-Appellant.

UNPUBLISHED

August 4, 2000

No. 216971

Saginaw Circuit Court

LC No. 98-015285-FC

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to rob while armed, MCL 750.89; MSA 28.284, four counts of armed robbery, MCL 750. 529; MSA 28.797, conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of twenty to forty years' imprisonment, and to a two-year consecutive term for felony firearm. On appeal, defendant argues that his rights to effective cross-examination under the federal and state constitutions were violated. We affirm.

We review whether a trial court has properly limited cross-examination for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). A defendant has a right to confront and cross-examine witnesses. *Davis v Alaska*, 415 US 308, 315; 94 S Ct 1105; 39 L Ed 2d 347 (1974); *Smith v Illinois*, 390 US 129, 131; 88 S Ct 748; 19 L Ed 2d 956 (1968); *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). The guarantee of an opportunity for effective cross-examination is not a guarantee of cross-examination in whatever way, and to whatever extent the defense might wish. *Delaware v Fensterer*, 474 US 15, 20; 106 S Ct 292, 88 L Ed 2d 15 (1985); *Ho*, *supra* at 189. The defendant is guaranteed only a reasonable opportunity to test the witness. *Id.* at 190. A witness' motivation for testifying is always relevant and a defendant is entitled to have the jury consider any fact that may have influenced the witness' testimony, *Davis*, *supra* at 316; *Minor*, *supra* at 685, including the fact that a prosecution witness has charges pending against him,

because this is relevant to the witness' interest in testifying. *People v Hall*, 174 Mich App 686, 690-691; 436 NW2d 446 (1989).

A trial court has wide discretion in matters of trial conduct so long as the court's comments do not unduly influence the jury and deprive the defendant of his right to a fair and impartial trial. *Lansing v Hartsuff*, 213 Mich App 338, 349-350; 539 NW2d 781 (1995). Comments concerning foundational requirements for admission of evidence are not of such a nature. *Id.*

On appeal, defendant challenges the trial court's limitation of his cross-examination of identification witness Wayne Farren about Farren's pending felony charges. There is no merit to this issue. Defendant was able to establish through cross-examination that Farren—who was facing a number of criminal charges, including attempted murder—had discussed the possibility of favorable treatment in his own case in exchange for his testimony, that he was rebuffed in terms of any specific promise, but that the prosecutor indicated that his testimony against defendant may be helpful to him. Defendant was also able to establish that Farren was in custody on several charges that could subject him to incarceration for a number of years. Although defendant was prevented from questioning Farren about whether he would be subjected to life in prison, defendant was able to show why the witness might have been biased or lacked impartiality. The trial court did not abuse its discretion in limiting defendant's cross-examination. The trial court did, however, make a comment in the presence of the jury, during the context of an evidentiary ruling, suggesting that the charges against Farren could be trespass or drunk driving. Even though the comment was made during an evidentiary ruling, *Hartsuff*, *supra* at 350, we agree that it was inappropriate.

Nevertheless, we conclude that the error was harmless beyond a reasonable doubt under the circumstances of this case. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Defendant was able to produce a record from which he argued vigorously that Farren was an interested witness, even if the extent of that interest was not fully exposed to the jury. Moreover, two other eyewitnesses also identified defendant, and Farren testified at the preliminary examination, before he had pending charges, that he was "very certain" about his identification of defendant. Defendant and his alibi witnesses were not found credible by the jury even in light of substantial inconsistencies in the testimony of the prosecution's witnesses.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer